

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

KIMBERLY GRUSNICK,

Petitioner,

Civil Action No.
12-CV-11550

vs.

HON. MARK A. GOLDSMITH

MILLICENT WARREN,

Respondent.

**ORDER ACCEPTING AND ADOPTING THE REPORT AND RECOMMENDATION
OF THE MAGISTRATE JUDGE DATED JULY 22, 2013, OVERRULING
PETITIONER'S OBJECTIONS, DENYING HABEAS CORPUS RELIEF, and
DECLINING TO GRANT A CERTIFICATE OF APPEALABILITY**

This matter is presently before the Court on the Report and Recommendation (R&R) of Magistrate Judge Paul J. Komives, issued on July 22, 2013. In the R&R, the Magistrate Judge recommends that the petition for writ of habeas corpus be denied and that the Court decline to issue a certificate of appealability. Petitioner has filed objections to the R&R. The Court reviews de novo those portions of the R&R to which an objection has been made. See Fed. R. Civ. P. 72(b).

Petitioner's sole argument is that the prosecutor improperly referenced Petitioner's silence at trial by commenting during the course of closing argument that "[n]o one has contradicted" certain evidence offered by the prosecution at trial. However, this comment does not warrant habeas relief because "[n]o direct mention was made of [Petitioner's] failure to testify" and, therefore, the Court "cannot say that the jury necessarily would have taken the challenged statements to be a comment on [Petitioner's] failure to testify." See Williams v. Wainwright, 673 F.2d 1182, 1185 (11th Cir. 1982). In any event, even if the statement was improper, the error was harmless for the reasons stated by the Magistrate Judge. See R&R at 12.

Accordingly, the R&R is accepted and adopted as the findings and conclusions of the Court, the petition for writ of habeas corpus is denied, Petitioner's objections are overruled, and the Court declines to issue a certificate of appealability.

SO ORDERED.

Dated: August 13, 2013
Flint, Michigan

s/Mark A. Goldsmith
MARK A. GOLDSMITH
United States District Judge

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing document was served upon counsel of record and any unrepresented parties via the Court's ECF System to their respective email or First Class U.S. mail addresses disclosed on the Notice of Electronic Filing on August 13, 2013.

s/Deborah J. Goltz
DEBORAH J. GOLTZ
Case Manager